S. 58

To amend the Communications Act of 1934 to improve protections against telephone service "slamming" and provide protections against telephone billing "cramming", to provide the Federal Trade Commission jurisdiction over unfair and deceptive trade practices of telecommunications carriers, and for other purposes.

IN THE SENATE OF THE UNITED STATES

January 19, 1999

Ms. Collins (for herself, Mr. Durbin, and Mr. Jeffords) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To amend the Communications Act of 1934 to improve protections against telephone service "slamming" and provide protections against telephone billing "cramming", to provide the Federal Trade Commission jurisdiction over unfair and deceptive trade practices of telecommunications carriers, and for other purposes.

- 1 Be it enacted by the Senate and House of Representa-
- 2 tives of the United States of America in Congress assembled,
- 3 SECTION 1. SHORT TITLE.
- 4 This Act may be cited as the "Telephone Services
- 5 Fraud Prevention and Enforcement Act of 1999".

1	SEC. 2. CONSUMER PROTECTIONS AGAINST TELEPHONE
2	SERVICE SLAMMING.
3	(a) In General.—Section 258 of the Communica-
4	tions Act of 1934 (47 U.S.C. 258) is amended to read
5	as follows:
6	"SEC. 258. PROTECTIONS AGAINST UNAUTHORIZED
7	CHANGES IN SUBSCRIBER SELECTIONS OF
8	TELEPHONE EXCHANGE SERVICE OR TELE-
9	PHONE TOLL SERVICE.
10	"(a) Prohibition on Unauthorized Changes.—
11	No telecommunications carrier or reseller of telecommuni-
12	cations services shall submit or execute a change of a pro-
13	vider of telephone exchange service or telephone toll serv-
14	ice except in accordance with this section and such ver-
15	ification procedures as the Commission shall prescribe.
16	"(b) Verification Procedure Requirements.—
17	"(1) In general.—In order to verify a sub-
18	scriber's selection of a telephone exchange service or
19	telephone toll service provider under this section, a
20	telecommunications carrier or reseller shall, at a
21	minimum, require the subscriber—
22	"(A) to affirm that the subscriber is au-
23	thorized to select the provider of that service
24	for the telephone number in question;
25	"(B) to acknowledge the type of service to
26	be changed as a result of the selection:

1	"(C) to affirm the subscriber's intent to
2	select the provider as the provider of that serv-
3	ice;
4	"(D) to acknowledge that the selection of
5	the provider will result in a change in providers
6	of that service; and
7	"(E) to provide such other information as
8	the Commission considers appropriate for the
9	protection of the subscriber.
10	"(2) Additional requirements.—The proce-
11	dures prescribed by the Commission to verify a sub-
12	scriber's selection of a provider shall—
13	"(A) provide for a complete copy of ver-
14	ification of a change in provider in oral, writ-
15	ten, or electronic form;
16	"(B) require the retention of such verifica-
17	tion in such manner and form and for such
18	time as the Commission considers appropriate;
19	"(C) require that verification occur in the
20	same language as that in which the change is
21	solicited; and
22	"(D) provide for a copy of the verification
23	to be made available to the subscriber con-
24	cerned on request.
25	"(3) Protection of freeze option —

"(A) Protection.—The Commission may not take action under this section to limit or prevent a subscriber's capability to require that any change in the subscriber's selection of a provider of telephone exchange service or telephone toll service not be carried out unless the subscriber communicates the authorization for the change to the subscriber's service provider in an express and direct manner.

"(B) Preservation of authority relating to unfair Marketing of freeze options.—Nothing in this section shall be construed to prohibit the Commission from preventing the marketing or provision in an unfair or anti-competitive manner of a capability to preclude a change in a subscriber's provider of telephone exchange service or telephone toll service without the subscriber's affirmative consent.

"(c) Notice to Subscribers of Changes.—

"(1) In General.—Whenever there is a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service, the telecommunications carrier or reseller selected shall notify the subscriber in a specific and unambiguous

1	writing, not more than 15 days after the change is
2	processed by the carrier or the reseller—
3	"(A) of the subscriber's new carrier or re-
4	seller; and
5	"(B) that the subscriber may request in-
6	formation regarding the date on which the
7	change was agreed to and the name of the indi-
8	vidual who authorized the change.
9	"(2) Response to request.—A carrier or re-
10	seller receiving a request under paragraph (1)(B)
11	shall submit to the subscriber concerned, not later
12	than 15 days after the date of the request, the infor-
13	mation covered by the request.
14	"(d) Forfeiture and Liability for Unauthor-
15	IZED CHANGES.—
16	"(1) Forfeiture.—Unless the Commission de-
17	termines there are mitigating circumstances, viola-
18	tion of subsection (a) is punishable by a forfeiture
19	of not less than \$40,000 for the first offense, and
20	not less than \$100,000 for each subsequent offense.
21	"(2) Subscriber liability.—A subscriber
22	whose telephone exchange service or telephone toll
23	service is changed in violation of the provisions of
24	this section or the verification procedures under this
25	section shall not be liable to the telecommunications

1	carrier providing such service after the change, in
2	accordance with such procedures as the Commission
3	shall prescribe.
4	"(3) Recovery of forfeiture and liabil-
5	ITY.—The Commission may take such action as may
6	be necessary to collect any forfeitures imposed under
7	paragraph (1).
8	"(4) Construction.—The remedies provided
9	by paragraphs (1) and (2) are in addition to any
10	other remedies available under law.
11	"(e) DISQUALIFICATION AND REINSTATEMENT.—
12	"(1) Disqualification from Certain activi-
13	TIES BASED ON CONVICTION.—
14	"(A) Disqualification of Persons.—
15	Subject to subparagraph (C), any person con-
16	victed under section 2328 of title 18, United
17	States Code, in addition to any fines or impris-
18	onment under that section, may not carry out
19	any activities covered by section 214.
20	"(B) DISQUALIFICATION OF COMPANIES.—
21	Subject to subparagraph (C), any company sub-
22	stantially controlled by a person convicted
23	under section 2328 of title 18, United States
24	Code, in addition to any fines or imprisonment

1	under that section, may not carry out any ac-
2	tivities covered by section 214.
3	"(C) Reinstatement.—
4	"(i) In General.—The Commission
5	may terminate the application of subpara-
6	graph (A) to a person, or subparagraph
7	(B) to a company, if the Commission de-
8	termines that the termination would be in
9	the public interest.
10	"(ii) Effective date.—The termi-
11	nation of the applicability of subparagraph
12	(A) to a person, or subparagraph (B) to a
13	company, under clause (i) may not take ef-
14	fect earlier than 5 years after the date or
15	which the applicable subparagraph applied
16	to the person or company concerned.
17	"(2) Certification requirement.—Any per-
18	son described in subparagraph (A) of paragraph (1).
19	or company described in subparagraph (B) of that
20	paragraph, not reinstated under subparagraph (C)
21	of that paragraph shall include with any application
22	to the Commission under section 214 a certification
23	that the person or company, as the case may be, is
24	described in such subparagraph (A) or (B).
25	"(f) State Law Not Preempted.—

- "(1) In General.—Nothing in this section shall be construed to preempt any State law that imposes more restrictive requirements, regulations, damages, costs, or penalties on changes in a subscriber's service or selection of a provider of telephone exchange service or telephone toll services than are imposed under this section.
 - "(2) EFFECT ON STATE COURT PROCEED-INGS.—Nothing in this section shall be construed to prohibit an authorized State official from proceeding in State court on the basis of an alleged violation of any general civil or criminal statute of such State or any specific civil or criminal statute of such State not preempted by this section.

"(g) Reports on Complaints.—

- "(1) REQUIREMENT.—Each local exchange carrier shall submit to the Commission on a quarterly basis a report on the number of complaints of unauthorized changes in providers of telephone exchange service or telephone toll service that are submitted to such carrier by its subscribers. Each report shall specify each provider of service complained of and the number of complaints relating to such provider.
- "(2) LIMITATION ON SCOPE.—The Commission may not require any information in a report under

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- paragraph (1) other than the information specified
 in the second sentence of that paragraph.
- "(3) UTILIZATION.—The Commission shall use the information submitted in reports under paragraph (1) to identify telecommunications carriers or resellers that engage in patterns and practices of unauthorized changes in providers of telephone exchange service or telephone toll service.
- 9 "(4) TERMINATION AUTHORITY.—The Commis10 sion may terminate the requirement in paragraph
 11 (1) upon a determination by the Commission that
 12 the number of complaints submitted to local ex13 change carriers regarding the changes described in
 14 that paragraph has decreased by a significant
 15 amount.".

(b) Criminal Penalty.—

17 (1) IN GENERAL.—Chapter 113A of title 18, 18 United States Code, is amended by adding at the 19 end the following:

20 "§ 2328. Unauthorized changes in telephone exchange

21 or telephone toll service

"Any person who submits or executes a change in a provider of telephone exchange service or telephone toll service not authorized by the subscriber concerned in willful violation of the provisions of section 258 of the Com-

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1	munications Act of 1934 (47 U.S.C. 258), or the proce-
2	dures prescribed under subsection (a) of that section—
3	"(1) shall be fined in accordance with this title,
4	imprisoned not more than 1 year, or both; but
5	"(2) if previously convicted under this section
6	at the time of a subsequent offense, shall be fined
7	in accordance with this title, imprisoned not more
8	than 5 years, or both, for such subsequent offense.".
9	(2) CLERICAL AMENDMENT.—The chapter anal-
10	ysis for chapter 113A of title 18, United States
11	Code, is amended by adding at the end the follow-
12	ing:
	"2328. Unauthorized changes in telephone exchange or telephone toll service.".
13	SEC. 3. CONSUMER PROTECTIONS AGAINST TELEPHONE
13 14	SEC. 3. CONSUMER PROTECTIONS AGAINST TELEPHONE BILLING CRAMMING.
14	BILLING CRAMMING.
14 15 16	BILLING CRAMMING. Part II of title II of the Communications Act of 1934
14 15 16	BILLING CRAMMING. Part II of title II of the Communications Act of 1934 (47 U.S.C. 251 et seq.) is amended by inserting after sec-
14 15 16 17	BILLING CRAMMING. Part II of title II of the Communications Act of 1934 (47 U.S.C. 251 et seq.) is amended by inserting after section 258 the following new section:
14 15 16 17	BILLING CRAMMING. Part II of title II of the Communications Act of 1934 (47 U.S.C. 251 et seq.) is amended by inserting after section 258 the following new section: "SEC. 258A. SUBSCRIBER PROTECTIONS RELATING TO
14 15 16 17 18	BILLING CRAMMING. Part II of title II of the Communications Act of 1934 (47 U.S.C. 251 et seq.) is amended by inserting after section 258 the following new section: "SEC. 258A. SUBSCRIBER PROTECTIONS RELATING TO TELEPHONE BILLING.
14 15 16 17 18 19 20	Part II of title II of the Communications Act of 1934 (47 U.S.C. 251 et seq.) is amended by inserting after section 258 the following new section: "SEC. 258A. SUBSCRIBER PROTECTIONS RELATING TO TELEPHONE BILLING. "(a) Prohibition on Knowing Submission of Un-
14 15 16 17 18 19 20 21	Part II of title II of the Communications Act of 1934 (47 U.S.C. 251 et seq.) is amended by inserting after section 258 the following new section: "SEC. 258A. SUBSCRIBER PROTECTIONS RELATING TO TELEPHONE BILLING. "(a) Prohibition on Knowing Submission of Unauthorized Charges.—
14 15 16 17 18 19 20 21	Part II of title II of the Communications Act of 1934 (47 U.S.C. 251 et seq.) is amended by inserting after section 258 the following new section: "SEC. 258A. SUBSCRIBER PROTECTIONS RELATING TO TELEPHONE BILLING. "(a) Prohibition on Knowing Submission of Unauthorized Charges.— "(1) In general.—No person, including a bill-

1	service or telephone toll service unless such charge
2	has been specifically and knowingly authorized by
3	the subscriber or is otherwise authorized or required
4	by law.
5	"(2) Scope of Prohibition.—The prohibition
6	in paragraph (1) shall apply to any submission of a
7	charge for purposes of the inclusion of the charge or
8	the bill of a subscriber, including the submission of
9	the charge to another entity by direct or indirect
10	means.
11	"(3) Regulations.—The Commission may
12	prescribe regulations for purposes of carrying out
13	this subsection.
14	"(b) Obligations of Billing Agents.—A billing
15	agent, including a telecommunications carrier or reseller
16	of telecommunications services, who issues a bill for tele-
17	phone exchange service or telephone toll service to a sub-
18	scriber shall—
19	"(1) state on the bill—
20	"(A) the name and toll-free telephone
21	number of any telecommunications carrier or
22	reseller for the subscriber's telephone exchange
23	sarvice and telephone tell sarvice.

1	"(B) the identity of each presubscribed
2	carrier or reseller of telecommunications serv-
3	ices; and
4	"(C) the charges associated with each car-
5	rier's or reseller's provision of telecommuni-
6	cations service during the billing period;
7	"(2) for services other than services described
8	in paragraph (1), state on a separate page—
9	"(A) the name of any company whose
10	charges are reflected on the subscriber's bill;
11	"(B) the services for which the subscriber
12	is being charged by that company;
13	"(C) the charges associated with that com-
14	pany's provision of service during the billing pe-
15	riod;
16	"(D) the toll-free telephone number that
17	the subscriber may call to dispute that compa-
18	ny's charges; and
19	"(E) that disputes about that company's
20	charges will not result in disruption of tele-
21	phone exchange service or telephone toll service;
22	and
23	"(3) show the mailing address of any tele-
24	communications carrier or reseller or other company
25	whose charges are reflected on the bill.

1 "(c) Additional Requirements Relating to 2 Billing.—

"(1) Prohibition on disruption of telephone service Based on dispute of certain Charges.—A provider of telephone exchange service or telephone toll service may not cease or otherwise disrupt the provision of such service to a subscriber in the event of the subscriber's dispute of a charge for any service other than telephone exchange service or telephone toll service that is included on the subscriber's bill for such service.

"(2) Toll-free number for dispute of certain charges.—Any provider of services covered by subsection (b)(2) shall ensure the availability of a toll-free telephone number that a subscriber issued a bill including a charge for such services may call in order to resolve disputes relating to the charge. Such number may be the number of the provider or the agent that issued the bill.

"(d) Forfeiture for Violations.—

"(1) Forfeiture.—Unless the Commission determines there are mitigating circumstances, violation of subsection (a) is punishable by a forfeiture of not less than \$40,000 for the first offense, and not less than \$100,000 for each subsequent offense.

1 "(2) Recovery.—The Commission may take 2 such action as may be necessary to collect any for-3 feitures imposed under paragraph (1).

"(e) STATE LAW NOT PREEMPTED.—

- "(1) IN GENERAL.—Nothing in this section shall be construed to preempt any State law that imposes more restrictive requirements, regulations, damages, costs, or penalties on the inclusion on subscriber bills of charges for telephone exchange service or telephone toll service than are imposed under this section.
- "(2) EFFECT ON STATE COURT PROCEED-INGS.—Nothing in this section shall be construed to prohibit an authorized State official from proceeding in State court on the basis of an alleged violation of any general civil or criminal statute of such State or any specific civil or criminal statute of such State not preempted by this section.

19 "(f) Reports on Complaints.—

"(1) Requirement.—Each local exchange carrier shall submit to the Commission on a quarterly basis a report on the number of complaints of the inclusion of unauthorized charges on the bills of its subscribers that are submitted to such carrier by its subscribers. Each report shall specify the basis of

- each charge complained of and the number of complaints arising from such basis.
- "(2) LIMITATION ON SCOPE.—The Commission may not require any information in a report under paragraph (1) other than the information specified in the second sentence of that paragraph.
- 7 "(3) UTILIZATION.—The Commission shall use 8 the information submitted in reports under para-9 graph (1) to identify telephone exchange service and 10 telephone toll service providers that engage in pat-11 terns and practices of including unauthorized 12 charges in their bills for such service.
- 13 "(4) TERMINATION AUTHORITY.—The Commis14 sion may terminate the requirement in paragraph
 15 (1) upon a determination by the Commission that
 16 the number of complaints submitted to local ex17 change carriers regarding the inclusion of charges
 18 described in that paragraph has decreased by a sig19 nificant amount.".
- 20 SEC. 4. FEDERAL COMMUNICATIONS COMMISSION JURIS-
- 21 DICTION OVER TELEPHONE SERVICE BILL-
- 22 ING PROVIDERS AND CERTAIN OTHER SERV-
- 23 ICE PROVIDERS.
- 24 Part II of title II of the Communications Act of 1934
- 25 (47 U.S.C. 251 et seq.), as amended by section 3(a) of

1	this Act, is further amended by inserting after section
2	258A the following new section:
3	"SEC. 258B. JURISDICTION OVER TELEPHONE SERVICE
4	BILLING PROVIDERS AND CERTAIN OTHER
5	SERVICE PROVIDERS.
6	"(a) In General.—Subject to subsections (b) and
7	(c), the Commission may assess and recover any penalty,
8	fine, or forfeiture provided for under this Act and may
9	impose any other sanction provided for under this Act (in-
10	cluding an order to cease and desist under section 312(b))
11	against any entity that is not a telecommunications carrier
12	for a violation of or failure to comply with any provision
13	of this Act, or any rule, regulation, or order under this
14	Act, to the extent that such entity—
15	"(1) provides billing services for the provision
16	of telephone exchange service or telephone toll serv-
17	ice;
18	"(2) provides billing services for services for
19	which charges appear on a subscriber's bill for tele-
20	phone exchange service or telephone toll service; or
21	"(3) provides services for which charges appear
22	on a subscriber's bill for telephone exchange service
23	or telephone toll service.
24	"(b) Limitation.—The Commission may not exer-
25	cise the authority in subsection (a) with regard to an en-

- 1 tity unless the Commission determines that the entity has
- 2 willfully or knowingly violated or failed to comply with a
- 3 provision of this Act or a rule, regulation, or order under
- 4 this Act.
- 5 "(c) Enforcement Actions.—
- 6 "(1) IN GENERAL.—The Commission may un-
- 7 dertake any action provided for under this Act for
- 8 purposes of the enforcement of a penalty, fine, for-
- 9 feiture, or other sanction under subsection (a).
- 10 "(2) CERTAIN FORFEITURE ACTIONS.—In de-
- termining and imposing a forfeiture penalty under
- section 503(b) utilizing the authority in subsection
- 13 (a), the Commission shall not be subject to the re-
- quirements set forth in paragraph (5) of such sec-
- 15 tion.".
- 16 SEC. 5. FEDERAL TRADE COMMISSION JURISDICTION OVER
- 17 UNFAIR OR DECEPTIVE PRACTICES OF TELE-
- 18 COMMUNICATIONS CARRIERS.
- 19 Section 5(a) of the Federal Trade Commission Act
- 20 (15 U.S.C. 45(a)) is amended by adding at the end the
- 21 following:
- 22 "(4) Notwithstanding the exception in paragraph (2),
- 23 the Commission is empowered to prevent telecommuni-
- 24 cations carriers (as that term is defined in section 3(44)
- 25 of the Communications Act of 1934 (47 U.S.C. 153(44)))

- 1 from using unfair or deceptive acts or practices in or af-
- 2 feeting commerce. The power of the Commission under
- 3 this paragraph is in addition to any power or authority
- 4 of the Federal Communications Commission over tele-
- 5 communications carriers under the Communications Act
- 6 of 1934.".
- 7 SEC. 6. PROVISION TO FEDERAL TRADE COMMISSION OF
- 8 FEDERAL COMMUNICATIONS COMMISSION
- 9 INFORMATION ON TELEPHONE SERVICES
- 10 FRAUD.
- 11 (a) REQUIREMENT.—Part II of title II of the Com-
- 12 munications Act of 1934 (47 U.S.C. 251 et seq.) is
- 13 amended by adding at the end the following:
- 14 "SEC. 262. PROVISION TO FEDERAL TRADE COMMISSION OF
- 15 FEDERAL COMMUNICATIONS COMMISSION
- 16 INFORMATION ON TELEPHONE SERVICES
- 17 FRAUD.
- 18 "Not later than 180 days after the date of the enact-
- 19 ment of the Telephone Services Fraud Prevention and En-
- 20 forcement Act of 1999, and every month thereafter, the
- 21 Commission shall provide to the Federal Trade Commis-
- 22 sion any information collected by the Commission as a re-
- 23 sult of complaints to the Commission regarding telephone
- 24 services fraud, including the following:

- 1 "(1) The submission or execution of an unau-2 thorized change of provider of telephone exchange 3 service or telephone toll service.
- "(2) The inclusion on a subscriber's bill for telephone exchange service or telephone toll service of a charge that has not been specifically and knowingly authorized by the subscriber concerned or otherwise authorized or required by law.".
- 9 (b) TREATMENT OF INFORMATION.—The Federal 10 Trade Commission shall incorporate in an appropriate 11 manner into the Consumer Sentinel online database main-12 tained by that Commission any information provided to 13 that Commission under section 262 of the Communica-14 tions Act of 1934, as added by subsection (a).

15 SEC. 7. STUDY OF CONSUMER BILLING CONTROLS RELAT-

16 ING TO TELEPHONE BILLS.

- 17 (a) Requirement.—The Federal Communications
- 18 Commission shall carry out a study of the feasibility and
- 19 advisability of requiring telephone service billing agents,
- 20 including telecommunications carriers who issue bills for
- 21 telephone exchange service or telephone toll service, to es-
- 22 tablish and provide consumer billing controls in order to
- 23 permit subscribers to prevent the inclusion of unauthor-
- 24 ized charges on bills for telephone service.

- 1 (b) Consultation.—In carrying out the study, the
- 2 Commission shall consult with the Federal Trade Commis-
- 3 sion, representatives of telecommunications carriers pro-
- 4 viding telephone exchange service or telephone toll service,
- 5 State commissioners, and consumers of telephone service.
- 6 (c) Report.—The Federal Communications Com-
- 7 mission shall submit to Congress a report on the results
- 8 of the study not later than 6 months after the date of
- 9 the enactment of this Act.

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